

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OTIS MICHAEL THOMAS,

Plaintiff,

v.

L. JOHNSON, et al.,

Defendants.

No. 2:21-cv-01657-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

I. Screening Requirement

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

In order to avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

II. Allegations in the Complaint

At all times relevant to the allegations in the complaint, plaintiff was an inmate at Folsom State Prison. While plaintiff names 21 separate defendants in this civil action, the factual

1 allegations in the complaint only concern two correctional officers: defendants Johnson and
2 Oseguera. Plaintiff asserts that on November 23, 2019, defendant Johnson verbally threatened
3 him by saying “move or I will hit you.” ECF No. 1 at 4. Defendant Johnson then requested
4 additional staff assistance. ECF No. 1 at 4. Defendant Oseguera arrived and placed plaintiff in
5 handcuffs. Id. Defendant Oseguera escorted plaintiff to a holding cell where he sprayed plaintiff
6 in the face with pepper spray after they exchanged words with one another. Id. In claim two,
7 plaintiff repeats the same factual allegations, but adds that defendant Oseguera issued plaintiff a
8 false rules violation (“RVR”) 12 days later in order to cover-up the use of his excessive force.
9 ECF No. 1 at 6. According to plaintiff, this RVR amounts to a conspiracy to violate plaintiff’s
10 civil rights. Id. In a separate claim, plaintiff asserts that this RVR was used to find him
11 unsuitable for parole at a hearing held in April 2020 which was part of the ongoing conspiracy
12 and retaliation against him.

13 Attached to the complaint are the inmate appeals that plaintiff filed concerning the events
14 of November 23, 2019, an RVR Supplemental Investigative Report, the Crime/Incident Report,
15 and the Disciplinary Hearing Result for the RVR issued to plaintiff. See ECF No. 1 at 12-64.
16 These documents indicate that plaintiff became verbally combative resulting in defendant
17 Oseguera activating his personal alarm, ordering plaintiff to get down, and ultimately pepper
18 spraying plaintiff in the face. Following a disciplinary hearing on December 19, 2019, plaintiff
19 was found guilty of willfully resisting a peace officer in the performance of his or her duties and
20 was assessed a loss of good time credit.

21 **III. Legal Standards**

22 The following legal standards are being provided to plaintiff based on his pro se status as
23 well as the nature of the allegations in his complaint.

24 **A. Linkage Requirement**

25 The civil rights statute requires that there be an actual connection or link between the
26 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
27 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
28 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a

1 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
 2 in another's affirmative acts or omits to perform an act which he is legally required to do that
 3 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th
 4 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must
 5 link each named defendant with some affirmative act or omission that demonstrates a violation of
 6 plaintiff's federal rights.

7 **B. Excessive Force**

8 The Eighth Amendment prohibits prison officials from inflicting cruel and unusual
 9 punishment on inmates which has been defined as “the unnecessary and wanton infliction of
 10 pain.” Whitley v. Albers, 475 U.S. 312, 319 (1986). “[W]henver prison officials stand accused
 11 of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the
 12 core judicial inquiry is... whether force was applied in a good-faith effort to maintain or restore
 13 discipline, or maliciously and sadistically to cause harm.” Hudson v. McMillan, 503 U.S. 1, 7
 14 (1992). The court’s inquiry into an excessive force claim focuses on the extent of the prisoner’s
 15 injury, the need for application of force, the relationship between that need and the amount of
 16 force used, the threat reasonably perceived by the responsible officials, and any efforts made to
 17 temper the severity of a forceful response. Hudson, 503 U.S. at 7 (1992) (quotation marks and
 18 citations omitted). While the absence of a serious injury is relevant to the Eighth Amendment
 19 inquiry, it does not end it. Hudson, 503 U.S. at 7. The malicious and sadistic use of force to
 20 cause harm always violates contemporary standards of decency in violation of the Eighth
 21 Amendment. Whitley, 475 U.S. at 327.

22 **C. Failure to Protect**

23 Under the Eighth Amendment, “prison officials have a duty to protect prisoners from
 24 violence at the hands of other prisoners.” Farmer v. Brennan, 511 U.S. 825, 833 (1994) (internal
 25 quotation marks, ellipsis, and citation omitted). However, “not . . . every injury suffered by one
 26 prisoner at the hands of another . . . translates into constitutional liability for prison officials
 27 responsible for the victim’s safety.” Id. at 834. A prison official may be held liable for an assault
 28 suffered by one inmate at the hands of another only where the assaulted inmate can show that the

injury is sufficiently serious, and that the prison official was deliberately indifferent to the risk of harm. Id. at 834, 837. Thus, the relevant inquiry is whether prison officials, “acting with deliberate indifference, exposed a prisoner to a sufficiently substantial risk of serious damage to his future health.” Id. at 834 (internal quotation omitted). To be deliberately indifferent, the “official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Id.

D. Conspiracy

To state a claim for conspiracy under 42 U.S.C. § 1983, plaintiff must plead specific facts showing an agreement or meeting of minds between the defendants to violate his constitutional rights. Woodrum v. Woodward Cnty., 866 F.2d 1121, 1126 (9th Cir. 1989). Plaintiff must also show how an actual deprivation of his constitutional rights resulted from the alleged conspiracy. Id. ““To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy.”” Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2002) (quoting United Steel Workers of Am. V. Phelps Dodge Corp., 865 F.2d 1539, 1541 (9th Cir. 1989)).

The federal system is one of notice pleading, however, and the court may not apply a heightened pleading standard to plaintiff’s allegations of conspiracy. Empress LLC v. City and County of San Francisco, 419 F.3d 1052, 1056 (9th Cir. 2005); Galbraith v. County of Santa Clara, 307 F.3d 1119, 1126 (2002). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level....” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). A plaintiff must set forth “the grounds of his entitlement to relief[,]” which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action....” Id.

IV. Analysis

The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon which relief can be granted under federal law. First and foremost, the factual allegations in the complaint fail to link 19 of the named defendants with any alleged constitutional violation. To the extent that plaintiff alleges that defendant Johnson “knew or should have known” that his or

1 her conduct created an unreasonable risk of harm to plaintiff's safety, the complaint is entirely
2 devoid of any factual basis supporting this claim. Therefore, plaintiff has failed to allege an
3 Eighth Amendment failure to protect claim against defendant Johnson. The court cannot
4 determine, even at the screening stage, whether defendant Oseguera's conduct amounted to
5 excessive force based on the contradictory information included in the attachments to the
6 complaint. Moreover, even accepting plaintiff's allegations as true, the complaint does not allege
7 that the pepper spray was used in a malicious and sadistic manner in order to cause plaintiff harm.
8 Hudson v. McMillan, 503 U.S. 1, 7 (1992). Thus, plaintiff has not stated an Eighth Amendment
9 excessive force claim against defendant Oseguera. Plaintiff's conspiracy allegation is entirely
10 conclusory and does not provide any factual basis demonstrating an agreement among any of the
11 defendants to violate plaintiff's constitutional rights. For all these reasons, plaintiff's complaint
12 must be dismissed. The court will, however, grant leave to file an amended complaint.

13 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
14 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
15 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
16 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
17 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
18 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
19 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
20 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

21 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
22 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
23 complaint be complete in itself without reference to any prior pleading. This is because, as a
24 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
25 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
26 longer serves any function in the case. Therefore, in an amended complaint, as in an original
27 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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V. Plain Language Summary for Pro Se Party

The following information is meant to explain this order in plain English and is not intended as legal advice.

The court has reviewed the allegations in your complaint and determined that they do not state any claim against the defendants. Your complaint is being dismissed, but you are being given the chance to fix the problems identified in this screening order.

Although you are not required to do so, you may file an amended complaint within 30 days from the date of this order. If you choose to file an amended complaint, pay particular attention to the legal standards identified in this order which may apply to your claims.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections and Rehabilitation filed concurrently herewith.

3. Plaintiff's complaint is dismissed.

4. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint." Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: December 13, 2021


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE